

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002-344

April 13, 2004

RCC MINNESOTA, INC.  
Request for Waiver of Certain Requirements  
Of Chapter 290

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

In this Order, we grant in part and deny in part RCC Minnesota, Inc.'s (RCC). November 21, 2003 Request for Waiver of Certain Requirements of Chapter 290 (Waiver Request).

**II. BACKGROUND**

RCC is a cellular telephone carrier, which conducts business in Maine as "Unicel." RCC was granted status as an Eligible Telecommunications Carrier (ETC)<sup>1</sup> in an Order issued in this Docket on May 13, 2003. The Commission ordered the Company to adhere to Chapters 290 and 294 of its Rules as a condition for the granting of ETC status. *RCC MINNESOTA, INC., SRCL HOLDING COMPANY, SACO RIVER COMMUNICATIONS CORPORATION, Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2002-344, May 13, 2003.

On November 21, 2003, RCC requested waivers of four specific requirements of Chapter 290: (1) Section 9(A)(2), which describes the conditions under which an ETC may require a deposit from a residential service customer; (2) the part of Section 12(D) that describes the standards that an ETC must follow regarding the due date of bills; (3) Section 12(I) that deals with the application of partial payments; and (4) Section 14(A), which describes the length of time within which the utility must disconnect service at the customer's request. In response to RCC's Waiver Request, the Office of the Public Advocate (OPA) and the Telephone Association of Maine (TAM) filed comments. (The comments will be discussed below.)

On February 12, 2004, the Hearing Examiner issued a Report which recommended that we deny RCC's request for a waiver from the requirements of Section 9(A)(2) (Deposits) and Section 14(A) (Disconnection at a Customer's Request); conditionally grant RCC's request for a waiver from the requirements of Section 12(I)

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<sup>1</sup> An ETC is a carrier designated by the Commission to be eligible to receive federal universal service funds, pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 and 47 C.F.R. § 54.201 of the Federal Communications Commission's Rules.

(Application of Partial Payments); and decide that the request for a waiver from the requirements of Section 12(D) (Due Date of Bills) is unnecessary. Exceptions to the Examiner's Report were filed by the OPA, TAM, and RCC. Both the OPA and TAM agreed with findings and recommendations of the Examiners. RCC's exceptions are summarized below.

### **III. DECISION**

#### **A. Requested Waiver of Section 9(A)(2) of Chapter 290**

Section 9(A)(2) establishes the circumstances under which an ETC may request a deposit from a residential service customer. Specifically, under Section 9(A)(2), an ETC may collect a deposit only if the customer has an existing undisputed overdue balance for basic service within the prior six years. This Section also limits the amount of the deposit to two months' of basic service charges.

RCC requested a waiver of section 9 to allow it to use a national credit rating service that assesses the customer's credit history and derives a credit "score," which is used to determine whether the customer will be required to provide a deposit prior to obtaining service. Thus, if the waiver were granted, RCC would be allowed to collect a deposit under circumstances that other ETCs cannot and RCC would be allowed to collect higher deposits than other ETCs. RCC claimed that the requested waiver is reasonable because it conforms to standard mobile industry practice, the system has worked well for RCC and its customers, and, therefore, it should be allowed to continue.

The OPA and TAM both opposed RCC's request for waiver of Section 9(A)(2). The OPA asserted that the waiver should not be granted because the rule in question applies equally to the relationships between RCC and its customers and between wireline ETCs and their customers. Further, OPA asserted that RCC's use of different criteria in the past is no reason to waive the rule, which is unrelated to the nature of the wireless business. TAM points out that by applying for ETC status, RCC itself is no longer "standard" within the cellular industry. Further, TAM asserted that use of a credit report runs directly contrary to the central goal of universal service, which is to ensure that access to the telephone network is universally available. TAM also argued that offering a pre-paid service (as RCC states it offers as an alternative to a deposit) does not present an adequate solution because it does not fulfill the requirement of allowing unlimited flat-rated local calling. Finally, TAM asserted that RCC makes no claim that the requested waiver is based on any technological barriers or distinctions between wireless and wireline services.

Section 20(A) of Chapter 290 states that the Commission may, for good cause shown, waive any requirement of this Chapter that is not required by statute, provided that the waiver is not inconsistent with the purposes of this Chapter and Title 35-A. The Examiner recommended that RCC's request for waiver of Section 9(A)(2) be denied because RCC had failed to demonstrate that, as a wireless ETC, it should be allowed to adhere to a different standard concerning deposit requirements.

In its exceptions, RCC claimed that its waiver request was not “inconsistent with the purposes of Chapter 290 and Title 35-A.” RCC stated that it believed the purpose of Chapter 290 is to ensure that ETCs require deposits only when a customer’s credit history indicates that a deposit should be required and that the deposit request be tailored to the customer’s anticipated future charges. RCC argued that its approach achieves this same objective. RCC further stated that, because it has never offered a service that one would consider as “basic,” it likely would be unable to collect a deposit from any customer.

We disagree with RCC’s assertion that its approach to collecting deposits achieves the same objectives as Section 9(A)(2), but agree that the basic/non-basic service distinction bears little relevance to the mobile phone industry. For this reason, we find that it does not make sense to require RCC to comply with Section 9(A)(2) for all its calling plans. Rather, we find Section 9(A)(2) should apply only to RCC’s Lifeline Unlimited Plan, which most resembles “basic service.” RCC is free to apply its own internal procedures with regards to deposits for all its other plans.

**B. Requested Waiver of Section 12(D) of Chapter 290**

Section 12(D) of Chapter 290 requires that the due date for payment of a bill for basic service be at least 25 days after the bill is mailed or otherwise delivered to the customer. RCC stated that its practice is to print on bills a “suggested” due date that is 25 days after the billing date, but that it does not assess late charges or consider an account past due until 10 additional days have elapsed. To the extent that its practice is considered inconsistent with Chapter 290, RCC requested a waiver. Both OPA and TAM believed that RCC’s billing due date practice substantially complies with Chapter 290 and that no waiver is required. The Examiners also agreed with OPA and TAM that no waiver was required.

We agree with the Examiners, OPA and TAM and find that no waiver of Section 12(D) is required, provided that RCC continues its practice of allowing up to 10 additional days before an account is considered past due.

**C. Requested Waiver of Section 12(I) of Chapter 290**

Section 12(I) of Chapter 290 requires that partial payments for bills first be applied to the balance for the basic service portion of the bill, beginning with the oldest balances. RCC asserted that its practice (which it claims is the general practice in the mobile service industry) is to apply all payments received against the customer’s oldest outstanding balance, because the distinction between basic and non-basic service built into Chapter 290 cannot reasonably be made in the context of the mobile service offerings provided by RCC. RCC claimed that customers for mobile service do not perceive the “basic versus toll” distinction that Chapter 290 contemplates. Thus, RCC requested a waiver of Chapter 290, so that it may continue its practice of applying customer payments to the oldest outstanding balances, without attempting to make a distinction between basic and non-basic services.

The OPA did not oppose the requested waiver because it believes that the basic/non-basic distinction is not well-suited to wireless service. In fact, according to the OPA, the distinction between state jurisdictional and interstate service is often delineated by arbitrary presumptions. Further, the OPA asserted that, unlike landline service, there might be no feasible way for RCC to terminate long-distance service while maintaining a local connection for a customer.

TAM opposed the requested waiver. It claimed that RCC's request is nothing more than an admission that RCC did not meet all of the requirements to become an ETC, specifically the FCC's requirement that, pursuant to 47 CFR § 54.101(a)(9), an ETC must be able to provide toll limitation for qualifying low-income customers. Given the apparent inability to distinguish between toll and local, TAM questioned how RCC would offer toll limitation. TAM argued that, if RCC has the capability to distinguish toll from local, there is no legitimate reason to exempt RCC from the apportionment requirements in Chapter 290. If, however, RCC cannot make the distinction, RCC does not qualify as an ETC under FCC Rules. TAM also asserted that RCC's request raises the further concern that RCC is providing local measured service, in violation of 35-A M.R.S.A. § 7303. TAM argued that RCC should use some of its federal USF money to bring itself into compliance with the toll limitation requirements, and in doing so, to update its system to allow itself to comply with the apportionment requirements of Chapter 290. Otherwise, TAM argued that the Commission should notify the FCC that RCC is not in compliance with federal rules and revoke its ETC status.

The Examiner agreed with RCC that the basic/non-basic service distinction contemplated in Chapter 290 bears little relevance to the mobile phone industry, and recommended that we grant the requested waiver. The Examiner expressed concern, however, that RCC may not be complying with the requirements of 47 CFR § 54.101(a)(9), which requires an ETC to offer toll limitation to qualifying low-income customers, and recommended that we grant RCC's request on the condition that RCC submit a filing to the Director of the Consumer Assistance Division demonstrating how RCC will comply with the federal requirement for toll limitation.

In its exceptions, RCC explained that any customer seeking a toll limitation feature may sign-up for its "Lifeline Unlimited Plan" that allows customers to choose a zone in Maine within which the customer is able to make unlimited calls at a flat rate of \$35.00. Under this plan, the customer's mobile phone is not able to make calls outside the zone, nor is it capable of making calls from within the zone that terminate outside the zone. Thus, according to RCC, it complies with the FCC's requirements relating to toll limitation. The Director of the Consumer Assistance Division agrees with RCC and finds that its "Unlimited Lifeline Plan" is a suitable proxy, considering the unique aspects of mobile telephone service, for the toll limitation feature required by federal rules.

We agree with the Examiner that the basic/non-basic service distinction contemplated in Chapter 290 bears little relevance to the mobile phone industry. We

also agree with the Director of the Consumer Assistance Division that RCC's "Unlimited Lifeline Plan" meets the requirements of 47 CFR § 54.101(a)(9) for toll limitation. We therefore grant RCC's request for a waiver from the requirements of Section 12(I).

**D. Requested Waiver of Section 14(A) of Chapter 290**

Section 14(A) of Chapter 290 requires, upon customer request, that an ETC disconnect a customer's service on 3 business days' notice. RCC stated that its standard subscriber contract requires the customer to provide 30 days notice prior to discontinuing service, and it requests a waiver from Chapter 290 so that it may continue the practice. RCC asserted that when a customer subscribes to a plan that includes free roaming beyond the RCC footprint, RCC invokes arrangements with other carriers, commits to pay for the customer's usage on other carriers' networks, and is charged a monthly fee. RCC stated that, in most cases, it must give 30 days notice to other carriers to avoid being charged the monthly carrier-to-carrier fee for the roaming arrangement. RCC asserted that if it were not granted the requested waiver, it would face significant exposure for the roaming arrangement fees because it will not be able to cancel the arrangements in time to avoid the charges. RCC also stated that it often enters into service agreements of a year or more and requested that the Commission clarify that customers still within the term of their service agreements cannot terminate the agreement (without cause) prior to the agreement's expiration date.

Both OPA and TAM opposed RCC's waiver request. OPA asserted that RCC's only justification for applying more stringent disconnection requirements than those in Chapter 290 Section 14(A), and thus seeking a waiver of that section of the Rule, is that RCC incurs costs on a monthly basis to provide roaming service to its customers. OPA further stated that RCC does not assert that the monthly cost is incurred in all cases, nor does RCC specify the amount of the costs incurred for such arrangements. OPA argued that, in any event, customer protection rules should not be waived simply because a carrier may incur costs with third parties. OPA asserted that consumer protection rules exist precisely because utilities face economic incentives to adopt policies that would otherwise harm customers. The OPA noted that RCC and other wireless carriers already enjoy large advantages over wireline ETCs in that cellular carriers almost always lock-in their customers with one-year or two-year contracts, with hefty fees for early termination. Therefore, the OPA asserted that it would be unreasonable to allow RCC to apply an extra 30-day notice requirement at the end of an expiring contract term. Finally, OPA indicated that it has no objection to clarifying that RCC is allowed to require term contracts during which customers may not exercise their 3-day notice of termination right.

TAM asserted that RCC's stated reason for requesting the waiver is, ironically, anticompetitive, because requiring more than 3 days notice hinders the ability of the customer to switch to a new service provider if the customer so chooses. The costs incurred are simply costs of doing business in a competitive market, and there is no legitimate reason to grant RCC's requested waiver from the 3-day notice requirement.

The Examiner agreed with TAM and the OPA and recommended that RCC's requested waiver from Section 14(A) be denied. The Examiner found that the purpose of the rule is to allow customers of ETCs to switch carriers at their option without unreasonable delay and that the 3-day notice requirement retains its validity for all ETCs, no matter if the carrier is a wireline or a wireless provider. Regarding the "clarification" sought by RCC, the Examiner found that early termination clause penalties contained in contracts entered into between RCC and customers are enforceable under contract law, and that RCC may impose early termination penalties that are included in the contract.

In its exceptions, RCC explained that the rationale behind this waiver request was its concern that this Section would hinder its ability to collect early termination fees from customers who break long-term contracts. With the clarification provided by the Examiners, this concern was alleviated.<sup>2</sup>

We questioned, however, during a deliberative session on March 15, 2004, whether RCC's practice of entering long-term contracts that contain early termination penalties is consistent with the intent of Section 14(A). Specifically, we were concerned that if RCC *requires* all customers to enter into long-term contracts, this would inhibit their ability to switch carriers without unreasonable delay. If this was indeed the case, we were also concerned that customers should be receiving something in return for waiving their rights to switch carriers without penalty, i.e., a discounted handset.

In response to our concerns, RCC explained in a letter dated March 30, 2004, that customers are free to choose between either monthly plans or longer term plans. In cases where a customer chooses to enter a long-term contract, the customer will receive a discounted handset. This explanation addresses our concerns.

With the above considerations in mind, we agree with the OPA, TAM, and the Examiner and find that the 3-day notice requirement retains its validity for all ETCs, no matter if the carrier is a wireline or a wireless provider and therefore deny RCC's request for a waiver of Section 14(A).

E. Lifeline and Link-Up Credit

During this proceeding, RCC solicited input from Commission staff regarding the appropriate amount of a Lifeline credit to provide to qualifying customers. When we certified RCC as an ETC we conditioned that certification on RCC's compliance with Chapter 294 of our Rules which establishes the eligibility criteria, discount levels, and verification of eligibility procedures for Maine's Lifeline and Link-Up programs.<sup>3</sup> *RCC MINNESOTA, INC., SRCL HOLDING COMPANY, SACO RIVER*

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<sup>2</sup> Though it seemed RCC was indicating in its exceptions that a waiver of Section 14(A) was no longer needed due to the Examiners clarification, it did not explicitly withdraw its waiver request.

<sup>3</sup> RCC stated that it would comply with the requirements of Chapter 294 as they relate to the Link-Up program by reducing its \$30.00 activation fee by one half.

*COMMUNICATIONS CORPORATION, Request for Designation as an Eligible Telecommunications Carrier, Docket No. 2002-344, May 13, 2003 at 6.*

Under Maine's Lifeline program, ETCs provide eligible customers with a monthly credit of \$13.50. The federal government provides \$10.00 of the credit and the carrier provides the remaining \$3.50. RCC stated that it intended to provide a Lifeline credit of \$10.87 per month to eligible customers.<sup>4</sup> This figure reflects the amount of credit that RCC expected to receive from the federal government. RCC stated that it is willing to provide the \$13.50 credit, provided that the State provides the \$3.50 in matching funds.

The State does not provide matching funds for Maine's Lifeline program. Rather, the ETCs themselves contribute the additional funds (\$3.50). This amount is then included in each ETC's revenue requirement and recovered from all customers through basic service rates. Consequently, there is no State "source" of funding from which to draw. Nonetheless, we find that RCC must provide the same Lifeline and Link-Up credit to its customers as the other ETCs provide their Lifeline and Link-Up customers. Because we do not regulate mobile carrier rates (and therefore do not regulate RCC's rates), RCC is free to recover this cost in its rates if it so chooses.

## **V. CONCLUSION**

For the reasons described above, we:

1. Deny RCC's Request for a Waiver of Section 9(A)(2), (Deposits) with regards to RCC's Lifeline Unlimited Plan. RCC must follow the requirements Section 9(A)(2) for its Lifeline Unlimited Plan but is free to apply its own internal procedures with regards to deposits for all its other plans;
2. Determine that no waiver of Section 12(D) (due date of bills) is necessary, provided that RCC continue its practice of allowing up to 10 additional days before an account is considered past due;
3. Grant RCC's request for a waiver of Section 12(I) (Application of Partial Payments); and
4. Deny RCC's request for a waiver of Section 14(A) (Disconnection at a Customer's Request).

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<sup>4</sup> We are unsure how RCC derived this amount. The federal government will provide up to a total of \$8.25 without any matching funds provided by the ETC or the State. If the State or ETC provides additional funds, the federal government will provide matching funds up to \$1.75.

Dated at Augusta, Maine, this 13<sup>th</sup> day of April, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Diamond  
Reishus



**NOTICE OF RIGHTS TO REVIEW OR APPEAL**

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.